

REMARKS

Applicants' attorney thanks the Examiner for considering the telephone comments initiated by the undersigned on 28 July 2006. Applicants' attorney proposed amending Claims 21, 50 and 53 (every independent claim) to recite that the fibrous nonwoven web is laminated continuously face-to-face with the film. This is supported in Figs. 3 and 4, and page 16, line 20 to page 18, line 5. This amendment is intended to overcome the Examiner's concern regarding the previous claim language requiring the nonwoven web to be "continuously adjacent to" the film. The Examiner opined that the previous claim language did not preclude the presence of an intermediate structure. The present claim language should overcome this concern.

a) Claim Rejection Based On Takahashi In View Of Chandler

The rejection of Claims 21-26, 31, 35, 37-39, 41, 44-54 and 56-58 under 35 U.S.C. § 103(a) as obvious over U.S. Patent 5,374,259 ("Takahashi") in view of U.S. Patent 6,028,160 ("Chandler et al.") is respectfully traversed. The rejection is premised on the Examiner's opinion that the previous claim language requiring the nonwoven web "continuously adjacent to" the film does not preclude an intermediate structure such as the absorbent core in Takahashi. The Examiner's opinion is based on *Ex Parte Hadsel*, 109 USPQ 509 (PTOBA 1955) and *Ex Parte Appeldorn*, 159 USPQ 791 (1967). However, the Office Action does not allege or explain why the Examiner believes that one skilled in the art would be unable to understand the intended meaning of the claim language based on a review of Applicants' specification.

It is always and everywhere improper to rely on an extraneous source to determine or advocate a meaning of claim language when the meaning is abundantly clear from Applicants' own specification. Only if a person skilled in the art cannot derive the intended meaning from Applicants' specification is it permissible to use other sources. Thus, a condition precedent to reliance on other sources is a showing that a person skilled in the art cannot derive the intended meaning from Applicants' specification.

As the Court stated in *Phillips v. AWH Corp.*, 75 USPQ2d (Fed.Cir. 2005):

It is the person of ordinary skill in the field of the invention through whose eyes the claims are construed. Such person is deemed to read the words used in the patent documents with an understanding of their meaning in the field, and to have knowledge of any special meaning and usage in the field. The inventor's own words that are used to describe the invention—

the inventor's lexicography—must be understood and interpreted by the court as they would be understood and interpreted by a person in that field of technology. Thus the court starts the decision making process by reviewing the same resources as would that person, viz., the patent specification and the prosecution history. Phillips, 75 USPQ2d at 1326.

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The claims, of course, do not stand alone. Rather, they are part of a “fully integrated written instrument,” Markman, 52 F.3d at 978, consisting principally of a specification that concludes with the claims. For that reason, claims “must be read in view of the specification, of which they are a part.” Id. at 979. As we stated in Vitrionics, the specification “is always highly relevant to the claim construction analysis. Usually, it is dispositive, it is the single best guide to the meaning of a disputed term.” 90 F.3d at 1582, Phillips, 75 USPQ2d at 1327.

Referring to Applicants' claims and specification, the term “outer cover” laminate (in every independent claim) is known in the art to be present on the underside of an absorbent core, and does not include an absorbent core as an intermediate layer. The outer cover laminate shown in Applicants' Fig. 4, the process for making it in Fig. 3, and the corresponding description in the specification make it abundantly clear that the film and nonwoven web are next to each other, continuously adjacent each other, and continuously laminated face-to-face with each other (as recited in the present claims). A person skilled in the art could not reasonably conclude, based on the specification, that an absorbent core is an intermediate layer of an outer cover. Accordingly, the structure of Takahashi (in which an absorbent core is interposed between a fibrous nonwoven layer and film) does not disclose or suggest an outer cover laminate as recited in Applicants' independent claims.

Further as to Takahashi, the Examiner incorrectly alleges that “the reference is not concerned with the layering sequence of films and nonwovens” (Office Action, page 2). To the contrary, any revision of the disclosed layer sequence would defeat the function of the absorbent article, and render it inoperable for its intended purpose.

The structure in Takahashi relied on by the Examiner includes a single-layer nonwoven bodyside liner, followed by an absorbent core, followed by a single-layer film outer cover. If the film were instead put on the top, then the absorbent article would not receive any liquid from the wearer. If the nonwoven layer were instead put on the bottom, then there would be no bodyside liner protecting the wearer's skin from liquid insults

absorbed in the core. Either modification would substantially defeat the prior art absorbent article, and would therefore not be obvious. See MPEP 2143.01 and cases cited therein.

Takahashi et al. does not disclose or suggest an outer cover laminate including a film and a fibrous nonwoven web continuously laminated face-to-face with the film, in which each layer of the film and the fibrous nonwoven web include a biodegradable thermoplastic polymer as recited in Claims 21, 50 and 53. The outer cover disclosed in Takahashi et al. consists of a film or a nonwoven cloth, but not both (Col. 7, line 65 – Col. 8, line 26). The reference does not motivate a person skilled in the art to combine a biodegradable breathable film and a biodegradable nonwoven web continuously face-to-face with the film, to form a breathable outer cover laminate as claimed.

Furthermore, Takahashi et al. emphasizes the use of biodegradable polymers other than the polymers recited in Applicants' claims. The biodegradable polymers emphasized in Takahashi et al. include urethane bonds derived from diisocyanate coupling agents (Col. 3, lines 48-64) and apparently do not employ terephthalic acid. Claims 21 and 50, by contrast, recite biodegradable thermoplastic polymers selected from the group consisting of a) polylactic acid polymers, b) polyester terpolymers of butanediol, adipic or succinic acid, and terephthalic acid, c) polycaprolactone polymers, and d) combinations thereof. Takahashi et al. does not disclose or suggest these polymers.

The Examiner alleges that Chandler et al. discloses biodegradable thermoplastic polymers as claimed by Applicants. However, the Examiner has found no suggestion in the prior art to substitute biodegradable polymers disclosed in Chandler et al. for the polymers that are clearly specified by Takahashi et al. Takahashi et al. places great emphasis on the specified diisocyanate-coupled polymers and does not provide for their substitution. The substitution of polymers proposed by the Examiner can only be based on improper hindsight. Where Takahashi emphasizes the use of its own polymers, it would not be obvious to arbitrarily substitute polymers disclosed in another reference.

Accordingly, this claim rejection should be withdrawn.

The additional rejection of Claims 40, 42 and 43 under 35 U.S.C. § 103(a) as obvious over Takahashi et al. and the article by Roberts entitled "Beta-Cyclodextrin Molecules And Their Use In Breathable Barriers" is respectfully traversed. These claims depend from Claim 21 and are patentable for at least the same reasons, explained above. The combined references do not disclose or suggest an outer cover laminate including a

film and a fibrous nonwoven web continuously laminated face-to-face with the film, in which each layer of the film and the fibrous nonwoven web include a biodegradable thermoplastic polymer as recited in Claim 21. Moreover, there is no suggestion or motivation to combine Takahashi et al. with Chandler et al. as explained above.

Accordingly, this claim rejection should be withdrawn.

b) Conclusion

Applicants believe that the claims are in condition for allowance, and respectfully request issuance of a Notice Of Allowance.

Respectfully submitted,



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